

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**BRUSIE “DON” LANHAM,**

**Petitioner,**

**v.**

**Civil Action No. 2:07 CV 100  
(Maxwell)**

**DAVID BALLARD, Warden,**

**Respondent.**

**ORDER**

It will be remembered that the above-styled civil action was instituted on November 30, 2007, when the Petitioner, Brusie “Don” Lanham, through counsel, filed a Petition under 28 U.S.C. § 2254 for Writ of *Habeas Corpus* by a Person in State Custody in the United States District Court for the Southern District of West Virginia. It will further be remembered that the case was transferred to this Court on December 3, 2007, in light of the fact that the Petitioner’s conviction and sentence had been imposed by the Circuit Court of Ritchie County, West Virginia.

It will further be remembered that the above-styled civil action was referred to United States Magistrate Judge John S. Kaull for initial review and report and recommendation pursuant to Rules 83.13, *et seq.*, of the Local Rules of Prisoner Litigation Procedure.

After conducting an initial screening and review, Magistrate Judge Kaull determined that summary dismissal was not warranted and, by Order To Show Cause entered December 7, 2007, directed the Respondent to file an Answer to the § 2254 Petition within thirty days from the date of entry of said Order.

The docket in the above-styled civil action reflects that the Respondent's Answer was filed on January 25, 2008, along with a Motion For Summary Judgment. The Petitioner's Memorandum And Response To Respondent's Motion For Summary Judgment were filed on February 25, 2008.

On June 23, 2008, Magistrate Judge Kaull issued an Opinion/Report And Recommendation, wherein he recommended that the Respondent's Motion For Summary Judgment be granted and that the Petitioner's § 2254 Petition be denied and dismissed with prejudice.

In his Opinion/Report And Recommendation, Magistrate Judge Kaull provided the parties with ten days from the date he was served with a copy of said Opinion/Report And Recommendation in which to file objections thereto and advised the Petitioner that a failure to timely file objections would result in the waiver of his right to appeal from a judgment of this Court based upon said Opinion/Report And Recommendation.

The Court's review of the docket in the above-styled civil action has revealed that neither party has, to date, filed any objections to Magistrate Judge Kaull's June 23, 2008, Opinion/Report And Recommendation.

Upon consideration of Magistrate Judge Kaull's June 23, 2008, Opinion/Report and Recommendation, and having received no written objections thereto<sup>1</sup>, it is

**ORDERED** that the Opinion/Report And Recommendation entered by United States Magistrate Judge John S. Kaull on June 23, 2008 (Docket No. 13), be, and the

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<sup>1</sup>The failure of a party to file an objection to a Report And Recommendation waives the party's right to appeal from a judgment of this Court based thereon and, additionally, relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See Wells v. Shriners Hospital, 109 F.3d 198, 199-200 (4<sup>th</sup> Cir. 1997); Thomas v. Arn, 474 U.S. 140, 148-153 (1985).

same hereby is, **ACCEPTED** in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

**ORDERED** that the Respondent's Motion For Summary Judgment (Docket No. 7) be, and the same is hereby, **GRANTED**. It is further

**ORDERED** that the Petitioner's Petitioner's Petition under 28 U.S.C. § 2254 for Writ of *Habeas Corpus* by a Person in State Custody (Docket No. 1), be, and the same is hereby, **DENIED** and **DISMISSED, with prejudice**. It is further

**ORDERED** that the Clerk of Court shall enter judgment for the Respondent. It is further

**ORDERED** that, should the Petitioner desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the Petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court Of Appeals For The Fourth Circuit.

The Clerk of Court is directed to transmit copies of this Order to counsel of record herein.

**ENTER:** July 25, 2008

**/S/ Robert E. Maxwell**  
United States District Judge